

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	CHAPTER 11
	§	
BASIC ENERGY SERVICES, INC., <i>et al.</i> ,	§	Case No. 21-90002 (DRJ)
	§	
Debtors.	§	(Jointly Administered)
	§	
PPC ENERGY, LP and PRIEST	§	
PETROLEUM CORPORATION,	§	
	§	
Plaintiffs,	§	Adversary No. 23-03208
	§	
vs.	§	
	§	
SELECT ENERGY SERVICES, LLC,	§	
	§	
Defendant.	§	

**NOTICE OF APPEAL AND STATEMENT OF
ELECTION**

Plaintiffs PPC Energy, LP and Priest Petroleum Corporation (collectively, “PPC”), hereby file this *Notice of Appeal and Statement of Election* seeking to appeal this Court’s January 4, 2024, bench ruling.

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):
PPC Energy, LP and Priest Petroleum Corporation.
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:
Appellants are Plaintiffs in the above-captioned adversary proceeding.

Part 2: Identify the subject of this appeal

1. Describe the judgment—or the appealable order or decree—from which the appeal is

taken:

On January 4, 2024, this Court ruled that none of the “Final Judgment” entered by the 143rd District Court of Reeves County, Texas, Cause No. 02-01-23355-CVR, in favor of PPC Energy, LP and Priest Petroleum Corporation against Basic Energy Services, LP is an “Assumed Liability” as defined in the executed Asset Purchase Agreement approved by the Court in connection with the Order at Main Case Docket No. 438.

2. State the date on which the judgment—or the appealable order or decree—was entered:
January 4, 2024.

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment—or the appealable order or decree—from which the appeal is taken and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

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Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

Pursuant to 28 U.S.C. § 158(c)(1), Plaintiffs/Appellants elect to have the appeal heard by the United States District Court.

Respectfully submitted,

/s/ Jeff P. Prostok

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument has been served on all parties and counsel of record in compliance with the Federal Rules of Civil Procedure on this 18th day of January 2024.

/s/ Michael K. Reer

Michael K. Reer

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PRIEST PETROLEUM CORPORATION, ET AL	§ CASE NO. 23-03208-ADV § HOUSTON, TEXAS §
v	§ THURSDAY, § JANUARY 4, 2024 §
SELECT ENERGY SERVICES, LLC, ET AL.	§ 10:02 A.M. TO 10:48 A.M.

RULING

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:	SEE NEXT PAGE
COURTROOM DEPUTY/ERO:	ZILDE COMPEAN

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1 HOUSTON, TEXAS; THURSDAY, JANUARY 4, 2024; 10:02 A.M.

2 THE CLERK: All rise.

3 THE COURT: Happy New Year, everyone. This is Judge
4 Lopez, I'm calling the 10:00 o'clock docket. Why don't I take
5 appearances? I'm going to get myself set up here and we'll
6 get started in a moment.

7 MS. BROWN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MS. BROWN: Dierdre Brown on behalf of the
10 Plaintiffs, PPC Energy and Priest Petroleum Corporation, and
11 I'm joined today with Mr. Weir and the company's principals
12 who are in the courtroom as well.

13 THE COURT: Okay. Good morning.

14 MR. LEU: Good morning, Your Honor. Jordan Leu with
15 Vinson & Elkins. I'm joined by my colleague Tom Mitsch and my
16 co-counsel, Mike Moore of the Brown Pruitt firm. We represent
17 the Defendant, Select.

18 THE COURT: Okay. Good morning. And I would note
19 that we're in Case Number 23-03208. It looks like there's a
20 number of parties on the line.

21 Is there anyone who needs to make an appearance
22 here, or can I mute this line?

23 (No audible response.)

24 THE COURT: Well, I'm muting it anyway.

25 (Conference muted.)

1 THE COURT: Okay. Ms. Brown, good morning.

2 MS. BROWN: Good morning, Your Honor. Just as a
3 preliminary matter I think there may have been some procedural
4 confusion given the Court's order.

5 THE COURT: Uh-huh.

6 MS. BROWN: Which we tried to comply specifically
7 with the Court's order and do a brief, whereas we had had
8 prior discussions about doing a motion practice, et cetera.
9 The Court said, you know, let's just wait and I'll issue an
10 order. The order came forward so we tried to comply with the
11 order. If there was any misunderstanding of the order, we're
12 happy to do whatever the Court prefers.

13 THE COURT: No, it was a question I was going to ask
14 you all. How do you -- I'm ready to give you the answer to
15 the question today, and I'm ready to rule on it. Maybe we can
16 take up the summary judgment or I can just issue, and I
17 requested briefing on the dispositive issue in connection with
18 the adversary proceeding and admit evidence. I think it's all
19 kind of six and one-half dozen of the other.

20 MS. BROWN: Yeah, the motion for summary judgment
21 itself I don't believe was actually set for hearing today.

22 THE COURT: That's exactly right.

23 MS. BROWN: So if the Court wants to take that up
24 separately, we would prefer to go ahead and, you know, go
25 forward with a full evidentiary motion and cure any concerns

1 that they have with us just asking under Rule 26.4 if the
2 Court issues summary judgment in our favor, if that's the
3 decision the Court may have.

4 THE COURT: Okay.

5 MS. BROWN: I also wanted -- it sounds like the
6 Court doesn't need oral argument today then on the
7 dispositive --

8 THE COURT: Well, it's a contract --

9 MS. BROWN: Right.

10 THE COURT: -- it's a long issue I think.

11 MS. BROWN: As a point of personal privilege though,
12 given some of the, I don't want to say ad hominem, but
13 somewhat strong language in the reply. There was a footnote
14 reference to the fact that a law clerk that's now working for
15 yourself and Judge Isgur had formerly worked for Judge Jones
16 and had worked on several of the complex cases, including this
17 one, on the plan --

18 THE COURT: Right.

19 THE WITNESS: -- issues. That was done, as the
20 Court knows, in full disclosure. Candor to the Court there's
21 judicial canon that apply to law clerks as well as to judges,
22 and under Judicial Canon 3(f)(2)(A) Subpart 2 we wanted to
23 make sure that the Court was aware of that, presumably the
24 Court was, and so especially in this climate --

25 THE COURT: No, no, I got it.

1 MS. BROWN: -- and in bankruptcy it's disclose,
2 disclose, disclose.

3 THE COURT: Yeah.

4 MS. BROWN: I just wanted to make sure the Court was
5 fully aware.

6 THE COURT: And I just want you to know that any
7 insinuation that that somehow affected my decision is
8 absolutely ridiculous, and I'll say it for the Record.

9 MS. BROWN: Thank you, Your Honor. Again, and
10 any -- and there was never an intent to suggest --

11 THE COURT: No, no, no --

12 MS. BROWN: -- that it would.

13 THE COURT: -- I got it. I got it. I'm just --

14 MS. BROWN: Yeah.

15 THE COURT: -- I'm just saying, this is -- you can
16 agree or disagree with the decision, but it will, you know, be
17 facts and law and you can take them up and not like them, if
18 you like them, so.

19 MS. BROWN: Thank you. I just wanted to make sure
20 because I saw that --

21 THE COURT: Yeah, and --

22 MS. BROWN: -- Ms. Morrison was also on the line.

23 THE COURT: -- and let's see who else is -- I don't
24 even know if it was -- is Jackson Walker involved in this
25 case?

1 MS. BROWN: It's been monitoring all of these
2 hearings that we've had --

3 THE COURT: I know that.

4 MS. BROWN: -- before Judge Jones and yourself.

5 THE COURT: I know, but --

6 MS. BROWN: So they're not a direct party, but
7 they're always --

8 THE COURT: Yeah --

9 MS. BROWN: -- present.

10 THE COURT: -- I understand. This is like -- I
11 don't even understand the connection. I don't even
12 understand -- I got it, you're raising the issue and it's
13 in -- I got it. This -- we don't even -- like this is -- we
14 don't even have Jackson Walker here.

15 MS. BROWN: Well, I'm not sure.

16 THE COURT: Or even is it involved here. In terms
17 of this dispute between the two --

18 MS. BROWN: Right, right. They --

19 THE COURT: -- parties, and in my --

20 MS. BROWN: -- yeah, they've been --

21 THE COURT: -- thinking and my analysis and what's
22 going to on with me, there's zero, there's zero there.

23 MS. BROWN: Understood.

24 THE COURT: I took this case up, I asked for the
25 briefing, I did the work, I'm issuing my ruling.

1 MS. BROWN: Understood. And because Jackson Walker
2 had been present at all the hearings --

3 THE COURT: Yeah, I know, I got it.

4 MS. BROWN: Yeah, there was never any insinuation to
5 the contrary, it was just making sure there was full
6 disclosure.

7 THE COURT: No, I appreciate it.

8 MS. BROWN: Thank you, Your Honor.

9 THE COURT: Anything else?

10 (No audible response.)

11 THE COURT: So how do want to handle today? I mean
12 I'm going to give you all an answer today, you know, and tell
13 me what you want.

14 MR. LEU: Your Honor, Jordan Leu with Vinson &
15 Elkins for the Record. We understood this was a hearing for
16 Your Honor to deliver a ruling. We're totally comfortable
17 with that.

18 THE COURT: Okay.

19 MR. LEU: We thank you, Your Honor.

20 THE COURT: So let me ask you this before I rule,
21 are parties comfortable just admitting -- are there any
22 disputes that I can't review, like I can't rely on the jury
23 charge, the APA, the -- I think you all filed a September --
24 what I would call the September 22 Court -- the State Court,
25 where the State Court took up stuff and then issued the jury

1 charge and then attached the jury charge or the final
2 judgment.

3 MR. LEU: I don't believe so, Your Honor.

4 THE COURT: And then --

5 MS. BROWN: We think the Court should take judicial
6 notice of anything that's been filed in State Court or in this
7 Record here.

8 THE COURT: So let me -- and the APA, the executed
9 APA.

10 MS. BROWN: Again, judicial notice.

11 THE COURT: Well, I don't know, but let's just -- I
12 mean what I'm saying is, let's see, you all admitted -- you
13 all -- I want to get this -- I want to get this right
14 because -- all right, you all -- both of you just filed
15 exhibits and I believe the PPC brief includes just about
16 everything in it. Your brief contained as exhibits the APA,
17 the stalking horse order, the assumption agreement, the sale
18 order, the lift stay order, the second amended petition, the
19 final judgment.

20 The only thing, I would just take -- I would just
21 add probably -- and the APA disclosures. The only thing I
22 would want to add to this is just taking judicial notice of
23 the -- that September 22 hearing. And it's not evident, but
24 it's just that -- but I would -- I didn't consider it.

25 MR. LEU: Yes, Your Honor. Yes, I think perhaps as

1 a housekeeping matter we would move for admission of our
2 exhibits filed a couple of days ago at Exhibit -- or at Docket
3 Number 45.

4 THE COURT: Do you have any objection to the
5 exhibits, of their Exhibit 1 through 9, 1 is the APA, 2 -- I'm
6 talking about Ms. Brown's PPC's, and I should say that
7 Plaintiffs' 1 is the APA, Exhibit 2 is the stalking horse
8 order, 3 was the assumption agreement, 4 was the sale order, 5
9 was the lift stay order, 6 was the second amended petition,
10 Exhibit 7 is the final judgment, the May 12, 2023 judgment,
11 Exhibit 8 is the hearing transcript, Exhibit 9 is the APA
12 disclosures, Section 3.08.

13 MR. LEU: No objection, Your Honor.

14 THE COURT: All right.

15 (Plaintiffs' Exhibits 1 through 9 identified and received
16 into evidence.)

17 THE COURT: Is there anything else you think needs
18 to be supplemented here?

19 MR. LEU: Your Honor, if I may, Select filed an
20 exhibit --

21 THE COURT: I'm just trying to avoid -- if I rule
22 one way or the other and someone says that it wasn't evidence
23 or, you know, already.

24 MR. LEU: Yes, Your Honor. Select's exhibit list
25 filed at Docket 45 included a complete copy of the APA which

1 also included Disclosure Schedule 3.07. That would have been
2 within Exhibit 1, 45-1, so we would --

3 THE COURT: Can we just admit a full -- a full APA
4 with all exhibits? Where is that? In other words, it would
5 have all the disclosure schedules in there. It doesn't answer
6 the question. And I'll just tell everyone now, the APA
7 doesn't answer the question, which you can look to the APA, I
8 think the APA provides guidance. But is there something we
9 can admit that gets people comfortable -- both of you
10 comfortable that I have like a -- in other words, if you have
11 the APA, the APA is the -- we can agree on what the APA is
12 with all the exhibits.

13 You filed an executed version of it. Right?

14 MR. LEU: Yes, Your Honor. May I confer with
15 Ms. Brown for a minute about --

16 THE COURT: Yeah.

17 MR. LEU: -- what we both need?

18 THE COURT: Yeah.

19 MR. LEU: Thank you, Your Honor.

20 (Pause in the proceedings.)

21 MR. LEU: Your Honor, the parties have conferred and
22 agreed that Select's Exhibit 45-1(a)(1) should be admitted as
23 a fully executed complete copy of the APA with all exhibits
24 and schedules.

25 THE COURT: Any objection to that, ma'am?

1 MS. BROWN: No objection, Your Honor.

2 THE COURT: Okay. Okay.

3 (Defendant's Exhibit 1A1 identified and received into
4 evidence.)

5 THE COURT: Anything else?

6 MR. LEU: No, Your Honor. I believe everything else
7 is subject to judicial notice.

8 THE COURT: Okay. All right. And by the way, I'm
9 having -- this hearing is being recorded, and at the end of it
10 I will order an official transcript. No one has to do that,
11 I'm going to order it so that you'll have a record of what I
12 said. Okay?

13 MR. LEU: Yes, Your Honor.

14 THE COURT: I'm about to read about 9 pages so get
15 comfortable.

16 (Laughter.)

17 THE COURT: The issue the Court answers today is
18 whether all or any portion of the final judgment entered by
19 the 143rd District Court of Reeves County, Cause Number 20-
20 0123355, in favor of PPC Energy, LP and Priest Petroleum
21 Corporation against Basic Energy Services, LP is a "assumed
22 liability" as defined in the executed asset purchase agreement
23 approved by the Court in connection with the order at Main
24 Case Docket Number 438.

25 Here's some background that you all know. In

1 January 2020, before this Chapter 11 case started, Priest
2 Petroleum sued Basic and other defendants in Texas State Court
3 for negligence, negligence per se based on a violation of the
4 Texas Natural Resources Code, gross negligence, common law
5 waste and statutory waste, then declaratory judgment that
6 Basic committed certain acts like waste, trespass, private
7 nuisance and sought injunctive relief. In August of 2021
8 Basic filed, along with a number of other debtors but we'll
9 focus on Basic, filed for bankruptcy and the Reeves County
10 litigation was stayed.

11 In September of 2021 Basic and Plaintiffs filed a
12 joint stipulation to lift the stay as to the Reeves County
13 suit to allow the suit to proceed to judgment against the
14 insurance. That same month the Court approved a sale of the
15 Orsa Kesler Well, among other assets, to Select Energy
16 Services, LLC. The sale order approved the sale of the assets
17 to Select free and clear of liens, claims and interest rather
18 than assumed liabilities, assumed liabilities in the APA.

19 I'll take a moment to note that the Court, pre-me,
20 and I will delineate when it's pre-me and it is me, the Court
21 was David Jones. I would note for the Record since it's been
22 implied in October, early October, on October 3 my mother died
23 so I was in New York when all this stuff broke out. I
24 attended my mother's funeral and I came back to Houston when
25 everything had already kind of broken out with respect to

1 Judge Jones.

2 I saw him when he left the building, I have not had
3 a conversation with Judge Jones since. This analysis is
4 entirely based upon me and the work that I have done and my
5 analysis of the statutes. That's what I asked the parties to
6 do, and it's based on my briefing.

7 I shared a little bit of my personal life just so
8 you know how important judicial integrity is. I'm not saying
9 anyone questioned it, I'm just stating it for the Record, this
10 dispute involves to my knowledge two law firms that do not
11 include Jackson Walker, I don't pay attention to who monitors
12 courts or why they monitor them, it's a free courtroom and
13 people can dial in freely. I don't know why people do it, but
14 I haven't talked to anyone from Jackson Walker about this
15 case. Quite frankly I didn't know they were involved.

16 I've got two parties in front of me, would note that
17 in late October/November I've been busy dealing with other
18 cases, two trials in December. This analysis is based
19 entirely -- well, I'll say that's enough. That same -- the
20 APA required Select to assume all assumed liabilities as
21 defined, and all liabilities of Basic, other than assumed
22 liabilities which are defined as the excluded liabilities,
23 were retained by Basic.

24 Section 3.07 of the APA states, "Except as set forth
25 on Disclosure Schedule 3.07, there are no proceedings, which

1 is a defined term, and includes any environmental claims
2 pending or to seller's knowledge, threatened, alleging or
3 relating to any alleged violation or liability under
4 environmental laws with respect to the assets. Section 3.08
5 requires disclosure in Disclosure Schedule 3.08 of any
6 proceedings pending against any seller or to any seller's
7 knowledge which have been threatened against seller, any, if
8 determined, are resolved adversely in accordance with
9 Plaintiffs' demands would reasonably expect it to have
10 individually or in the aggregate a seller adverse -- seller
11 material adverse affect or otherwise materially affecting
12 buyer's ownership and operations of the assets following the
13 closing."

14 Basic did not list the Reeves County suit, the State
15 Court suit which I'll refer to as the Reeves County suit, as
16 an environmental matter under Disclosure Schedule 3.07.
17 Instead it was listed as a general liability on its Disclosure
18 Schedule 3.08. The APA appears to have been amended but no
19 amendment has changed that -- the schedule -- those schedules.

20 In October 2021, several weeks after the approval of
21 the sale, the Court, Judge Jones, approved a joint stipulation
22 and order granting limited relief from the automatic stay.
23 The relief order allowed Plaintiffs to collect any final
24 judgment or settlement, 1, from any and all insurance carriers
25 providing coverage for movants' claims, and/or 2, by funds

1 available under any and all insurance policies providing
2 coverage for the Debtor's adjudicated liability, and/or 3, any
3 other insurance obligations of the Debtor's insurance carriers
4 in connection with or related to claims asserted by movants.
5 It also says that collection pursuant to a final judgment is
6 recoverable only from the applicable insurance policies of the
7 Debtors and any -- and other third parties and not from the
8 Debtors or their estates directly or indirectly.

9 In August of 2022 the Reeves County suit was called
10 for a final trial. In September 2022 the Reeves County Judge
11 charged the jury in the Reeves County suit and in May 2023 a
12 final judgment was entered in the Reeves County suit. In
13 August of 2023 the Plaintiffs sued Select in Texas State Court
14 to enforce the Reeves County judgment against Select.

15 Plaintiffs sought money damages awarded in the final
16 judgment and costs of P&A its wells that Basic allegedly
17 damaged, a declaration that -- well, they didn't say allegedly
18 damaged, they said that Basic damaged; 2, the declaration of
19 the final judgment is assumed liability under the APA; 3, a
20 declaration that Select must pay the judgment; and 4, other
21 costs related to the interests, litigation costs and attorneys
22 fees, punitive or exemplary damages, and costs of suit.
23 Select removed the case to this Court in September of 2023.

24 In October of 2023, specifically on October 17, I
25 believe, this case was reassigned to Judge Christopher M.

1 Lopez. I am Judge Christopher M. Lopez. I held a hearing on
2 two pending matters. There was a pending motion by Plaintiffs
3 to remand the Select lawsuit back to the State Court, and
4 Defendants had also moved to dismiss the lawsuit.

5 I denied both, but I requested briefing to resolve a
6 dispute whether the final judgment is an assumed liability
7 under the APA, as defined by the APA. The parties filed
8 briefing, and it's reflected on the docket and I thank them
9 very much for their briefing, it was excellent.

10 So let me just move right into the parties -- the
11 APA is governed by Texas law, both Select and the Plaintiff
12 agree that the APA, the sale order, are unambiguous, and when
13 a contract is unambiguous a Court may interpret the contract
14 as a matter of law. I'm citing *Northland Industry, Inc. v*
15 *K-O-U-B-A*, 620 S.W.3d 411, 415 pinpoint cite, Texas 2020 case.
16 I'm going to cite the case also to say the Court should "give
17 affect to the parties as intent as expressed in the
18 contractual language". The Court should "ascertain" and it
19 also says intent, "by giving words the meaning a reasonable
20 person would afford them under the circumstances, and by
21 construing them with the contractual context as a whole and
22 not an isolation".

23 Here's a new case, *Reilly v Rangers Management,*
24 *Inc.*, 727 S.W.2d 527, pinpoint cite 530, Texas Supreme Court
25 1987. It says, The Court, however, should not construe a

1 contract provision in a manner that's unreasonable or absurd.
2 That Court stated that Courts should avoid when possible
3 construction which is unreasonable, inequitable or oppressive.
4 *Pavecon, Inc. v R-Com, Inc.*, 159 S.W.3d 219, 222, Tex. App.
5 Fort Worth 2005. No pet -- no petition history for those who
6 are listening who are not lawyers -- stating that when
7 interpreting a contract the Court should avoid if possible
8 construction that is unreasonable, oppressive, inequitable or
9 absurd.

10 Let's jump into the analysis. Under Section 2.05 of
11 the APA, Select agreed to assume all "assumed liabilities",
12 liabilities that are not "assumed liabilities" are "excluded
13 liabilities", and excluded liabilities are retained by Basic
14 under the APA. The parties to the APA also entered into a
15 separate assumption agreement which provided for the same
16 assumption of the assumed liabilities. I would note that the
17 sale order approved the sale of the assets to Select as
18 purchaser free and clear of all liens, claims and interests
19 other than "assumed liabilities as defined in the APA".

20 The question the Court must decide today is whether
21 the final judgment in the State Court action is an assumed
22 liability or an excluded liability.

23 Now let's turn to the analysis. The definition of
24 assumed liabilities has several prongs, and it includes "all
25 liabilities associated with the assets arising under

1 environmental law, including with respect to environmental
2 claims whether arising on, before or after the closing date,
3 including without limitation those related to the control,
4 storage, handling, transportation and disposing of, discharge
5 of all materials, substances and waste from the -- from the
6 defined term assets, including produce water.

7 Plaintiffs argue the final judgment is an assumed
8 liability under this prong. Let's analyze it. For the final
9 judgment to be an assumed liability it must be, 1, a
10 liability, 2, associated with the assets, and 3, arising under
11 environmental law. The final judgment clears the first two
12 hurdles, but it fails on the last one. It is a liability
13 which is defined as an obligation to a Person, capital P
14 Person, and Capital P Person is defined broadly to include a
15 company like Select. The liability against Basic in the final
16 judgment also relates to an asset sold under the APA.

17 The real dispute, however, is whether it's a
18 liability, whether the liability "arises under environmental
19 law". Environmental law as defined under the APA includes,
20 and I quote, "any defined term applicable law relating to the
21 protection of occupational or health and human -- human health
22 and safety". So it also says, "To the extent relating to the
23 exposure to hazardous substances, to the environment including
24 ambient air, soil, surface water or ground water or subsurface
25 strata."

1 It also includes the release into the indoor and
2 outdoor environment of pollutants, contaminate waste,
3 chemicals and other toxic or hazardous substances or to clean
4 up thereof. The term environmental law as defined does not
5 include good or desirable operating practices or standards
6 that may be employed or adopted by other salt water disposal
7 well operators or recommended but not required by a
8 governmental authority.

9 And here you see what I think is vintage me.
10 Applicable law is defined broadly, but what does "arising
11 under" mean? Recall that an assumed liability is a liability
12 relating to the assets arising under environmental law.
13 "Arising under" is not defined in the APA, so the Court
14 applies its plain meaning.

15 Just give me a second.

16 (Pause in the proceedings.)

17 THE COURT: So what does it mean? Webster defines
18 it as to originate from a source -- to originate from a
19 source. Black's Law Dictionary defines arise as originating
20 from or stemming from. We can also see how courts have
21 defined arising under when it's undefined in a statute. A
22 good example is from a bankruptcy case, it gives the
23 definition of a core proceeding arising under the Bankruptcy
24 Code found in Title 28. Arising under, if jurisdiction has
25 been defined by the 5th Circuit in *Wood v Wood*, 825 F.2d 9096,

1 5th Circuit 1987, as a cause -- covering a cause of action
2 created or determined by a statutory provision of the
3 Bankruptcy Code.

4 So dictionaries and courts define it consistently.
5 So here, there must be a liability originating from, stemming
6 from or created by or determined by a law relating to the
7 protection of the environmental or occupational health or
8 safety or relating to the environment, et cetera.

9 I note that the definition of environmental law
10 under the APA does not break out subparts cleanly. Right? It
11 says -- it has that kind of hard comma, the environment. But
12 I agree, as Plaintiffs have, I think the best reading is to
13 include the word -- the phrase relating to as continuing
14 through every comma. So it's relating to the protection of
15 the environment, of occupational health and human safety, and
16 relating to the environment. Arising under is a limiting
17 factor defined by dictionary, defined by case law, it's not an
18 expanding one. Right? It's got to arise under this thing.

19 The Plaintiffs argue that the final judgment arises
20 under environmental law because it -- or it arises under an
21 applicable law relating to the environment. Right? The
22 applicable law Plaintiffs claim applies is the Texas Natural
23 Resources Code. Plaintiffs plead in State Court lawsuit, and
24 it's true, in the second amended complaint that Basic's
25 injection produced water, damaged PPC's oil and gas reserves

1 by "drowning", which in oil and gas terms refers to
2 pressurizing and producing formation with salt water such that
3 the oil and gas in place was forced out. Right? You drowned
4 it, you put so much in there it forced it out and it was
5 irrevocably lost.

6 They also pled that Basic's actions violated TNRC's
7 prohibition on "waste" which they say gives rise to an
8 negligence per se claim. That's what was alleged. And it is
9 true, the TNRC prohibits waste. Right? You look at Section
10 85.045, it's labeled, Waste, Illegal and Prohibited. The
11 production, storage or transportation of oil or gas in a
12 manner, in an amount, and under conditions that constitute
13 waste is unlawful and prohibited. Section 85.046 says the
14 term waste includes drowning with a water stratum, or part of
15 a stratum that's capable of producing oil or gas, both in
16 paying quantities.

17 We next analyze what the jury ruled on that
18 producing -- that produced the final judgment. For that we
19 review the amended complaint and the jury charge. We start
20 with the amended complaint. Count 5 is for negligence. It
21 says that the Plaintiffs seek judgment against Basic for
22 negligence, it says Basic had a duty to the Plaintiffs to
23 exercise reasonable care to prevent its injected fluids from
24 causing waste. Basic breached that duty by causing injected
25 waters to enter, drown and pressurize the producing stratum on

1 formations from which Plaintiffs' well produced.

2 Count 6 is for negligence per se. It says, "In the
3 alternative if necessary, Plaintiffs seek judgment against
4 Basic for negligence per se." By allowing injected water to
5 drown the producing stratum or formations from which the
6 Plaintiffs' wells produced, Basic violated the term --
7 permits, excuse me, issued by the Railroad Commission of Texas
8 and it violated statewide Rule 7N46, which cites to 16 Texas
9 Admin Code Sections 3.07 and 3.46, and violated Texas Natural
10 Resources Code 85.045 and 85.046, the alleged actions of Basic
11 they say constituted negligence per se, and they even sought
12 damages under Texas Nature Resources Code 85.321 and 85.322.

13 And as a mineral lease holder and owner of an
14 operator accorded the rights, they believe that they were the
15 class of persons entitled to be protected by the statutory
16 prohibition against the waste. So Count 5 is a general
17 negligence claim only and doesn't reference expressly the
18 TNRC, Count 6, whoever alleges a violation of the TNRC for
19 which Plaintiffs seek damages under the TNRC, too.

20 Let's turn to the jury instructions. The relevant
21 jury charge for me is Question 1, and it says, "Did the
22 negligence, if any, of those named below, which included
23 Basic, proximately cause the injury in question. Define
24 negligence as the failure to use ordinary care, that is
25 failing to do which a person of ordinary prudence would have

1 done under the same or similar circumstances, or doing that
2 which a person of ordinary prudence would not have done under
3 the same or similar circumstances."

4 It also says that a -- but it is negligence to
5 commit waste, and that the term waste means the drowning with
6 water or stratum or part of a stratum that is capable of
7 producing oil or gas in paying quantities or under a loss,
8 however caused. Plaintiffs claim this judgment arises under
9 environmental law fails for two reasons. First, the jury
10 charge is based on a negligence cause of action. Call it
11 negligence, negligence per se, it's a negligence cause of
12 action, and the negligence is not a law relating to the
13 environment. Right? This judgment does not arise under a law
14 relating to the environment.

15 Negligence is a general area of tort law, and for
16 that vintage me, Ann B. Dobbs, et al, Dobbs' Tort -- Law of
17 Torts, and Dobbs apparently replaced Prosser and Keeton which
18 I have to come find now. Paragraph 11, Chapter 11, Section
19 1122, and I'm looking at the second edition 2023. According
20 to Dobbs', which is a treatise on tort law, it involves harm
21 caused by failing to act as a form of carelessness, possibly
22 with extenuating circumstances.

23 Chapter 13, Sections 141, 142, and you can also see
24 Chapter 35, Section 406, the core concept of negligence is
25 that people should exercise reasonable care in their actions

1 by taking account of the potential harm that they might
2 foreseeably cause to other people or property at Section 141.

3 Here's the point, you can be used for all types of
4 harms humans and companies cause each other, assuming there's
5 a duty, a recognized duty under law. Right? I think
6 Plaintiffs incorrectly equate a law relating to the
7 environment the same as a negligence case involving facts
8 about the environment. The two are not the same. In this
9 case the liability does not arise under or originate or stem
10 from a law relating to the environment. It arises from a
11 general tort law that involves facts involving damage to the
12 environment. That's not a liability arising under
13 environmental law. General common law claims, tort law claims
14 don't fit here.

15 The definition of environmental law must also not be
16 read not in isolation but as a whole. So you look at the
17 entire definition. Again, you just don't look at one section,
18 you look at the entire definition to see the definition limits
19 the type of assumed liability.

20 Reading it as the Plaintiffs, this Court's opinion
21 leads to an absurd result that virtually any tort or breach of
22 contract claim involving Basic, a company involved in the oil
23 and gas business, would qualify as arising under environmental
24 law. Let's say an employee gets in an accident and spills gas
25 on the street. A finding of negligence in that case could

1 theoretically meet Plaintiffs' definition arising under
2 environmental law. Right? It's a great negligence claim, you
3 spilled gasoline on the street, you have -- that's the
4 negligence claim, you're liable for it, you have violated
5 environmental law under the APA. It's just -- right.

6 I'm also going to note Plaintiffs claim that the
7 jury charge includes a violation of the TNRC, and I think
8 that's also wrong. Plaintiffs claim that there's no way for
9 the jury to find ordinary negligence without a finding that
10 Basic violated the standard of care in the Texas Natural
11 Resources Code. That's the only breach alleged by PPC and
12 evidenced at trial.

13 What I have is the jury charge and the Record. And
14 the jury charge I take seriously, and it lays out the elements
15 of a negligence claim. And if that includes that waste
16 constitutes negligence, and it is true that the definition of
17 waste in the jury charge comes from part of the defined term
18 waste and the TNRC. But look at -- you've got to look at the
19 entire text of the jury charge. It does not include any
20 reference to allegations in Count 6 about violations of the
21 TNRC or the damages sections under the TNRC referenced in
22 Count 6 doesn't mention the Railroad Commission or even a
23 standard of care under the TNRC. It doesn't mention damages
24 under the TNRC either.

25 Calling it negligence per se, or referencing that

1 waste equals negligence per se doesn't change the answer here.
2 The Court's answer here is based on a strict reading of the
3 text of the jury charge. Does borrowing a part of the
4 definition from a statute mean that the statute itself is
5 incorporated therein and violated without clear statements in
6 the charge itself? The answer is no. A proper and reasonable
7 reading of the jury charge is that it concludes that the one
8 definition of waste constitutes negligence. Again, not
9 arising under environmental law as defined under the APA.
10 It's also not about alleged -- express any alleged expressed
11 TNRC violations.

12 A contrary finding, which is requested by the
13 Plaintiffs here, I believe would run contrary to bedrock
14 contractual interpretation and conservative contractual
15 interpretation principles. It would allow a narrow definition
16 of environmental claims to swallow the broader principles of
17 claims in contract and tort law and other liabilities that may
18 not be "assumed liabilities".

19 The facts aren't exactly the same, but I agree with
20 the reasoning in the *Motors Liquidation Company* case at 585 BR
21 708, a bankruptcy, Southern District of New York 2018 case, it
22 was the old GM case. The other debtors sold assets to a buyer
23 in a Section 363 sale, and the sale order and the asset
24 purchase agreement stated that the buyer, right, New GM
25 assumed all "assumed liabilities", and there was a defined

1 term there.

2 And there were -- certain personal injury claimants
3 asserted tort claims based on environmental contamination and
4 alleged that the personal injury claims were "assumed
5 liabilities". The allegations there were -- involved
6 contaminated ground water that migrated from property
7 previously owned before the sale by Old GM and then were now
8 owned by New GM into the water wells of nearby properties that
9 were used by homeowners for drinking water and normal
10 household uses. Like serious stuff.

11 The Court heard arguments that, you know, common
12 tort law claims were assumed liabilities, but the Court noted
13 that such an interpretation would greatly expand the scope of
14 New GM's liability and would in essence cause the exception to
15 swallow the rule in the sale agreement that GM retains
16 liabilities to third parties for claims defined therein. The
17 Court found that the more reasonable interpretation that New
18 GM assumed certain liabilities but not for the common law
19 tort.

20 And again, you've got to look at, that in and of
21 itself, you don't cite the GM case for -- because it's not --
22 right, you've got to look at every definition and you've got
23 to study the APA. The APA is what determines here in the
24 statutory analysis and the contractual term, the contractual
25 analysis is what determines what the answer is here today.

1 But the reasoning about the exception, right, swallowing the
2 rule, then everything can come in.

3 And I knew that trying to fit the final judgment as
4 a "environmental claim" doesn't work either. Environmental
5 claims as defined under the APA are defined as a subset,
6 right, and including environmental law, including
7 environmental claims. An environment claim is defined as any
8 affirmative obligation to effect clean up or remediation under
9 or in non-compliance with any environment law or any liability
10 associated with or arising therefrom.

11 Expanding the definition of environmental claim to
12 cover the final judgment goes beyond environmental law and
13 would allow the parties to swallow the whole. And again,
14 there must be a liability arising under environmental law.
15 Based on the analysis the final judgment does not arise under
16 one. The final judgment is therefore by definition under the
17 APA an excluded liability.

18 The analysis there would stand, but I take comfort
19 by looking at the September '22 jury charge in my analysis.
20 Again, you could stop on everything I just said, I just take
21 comfort. All right. Plaintiffs' counsel in that hearing
22 specifically asked the State Court to include a separate claim
23 for TNRC violations, and that commingling part of it with the
24 general negligence would create confusion.

25 Plaintiffs' counsel asked the Court -- told the

1 Court that, you know, the jury should be permitted to
2 determine the liability of the Defendants with reference to
3 both negligence and the waste. But the Court denied that
4 request. Plaintiffs' in their papers allege, you know, that
5 the Texas State Court made the right decision based on the
6 Texas jury charge. But that's not what they said when they
7 were in front of the State Court. Regardless, that issue is
8 not dispositive. Right? What we look to is what the jury
9 made a decision on and based on what.

10 I also looked to the APA, you've got to look at --
11 when you look at contract issues you don't look at a provision
12 in isolation, you look at other sections as well to make sure
13 they harmonize, see if there are any discrepancies. All
14 right. And the parties to that agreement listed the Reeves
15 County litigation in the general claims section and not the
16 assumed liabilities section.

17 Again, it's not a dispositive point but it just
18 shows that it harmonizes. Right? It's consistent with the
19 parties' understanding. It's indicative I should say that you
20 don't have a reading under environmental law one way that
21 expressly conflicts with what a schedule says. Right? The
22 two harmonize, and I looked to that as well.

23 I'm sure that there were -- I know Plaintiffs made
24 additional arguments that I'm not expressly addressing now. I
25 will let you know that I did consider them and I believe that

1 for the reasons I stated those arguments would be expressly
2 rejected for the -- based on the textual analysis that the
3 Court performed here. And again, the only answer I don't --
4 I'm only answering a legal question, and that's what I -- we
5 talked about doing, and that's what I've done. That's the
6 answer as I'm sure there are other issues, there's fishery.
7 None of that is before me today.

8 So that's my analysis. Because the Reeves County
9 suit is not an assumed liability it remains with Basic.
10 That's my analysis. Now tell me what you want to do, I'm
11 done. I will get a copy of the transcript. And again, I
12 tried to give you an answer, I tried to give you cases, case
13 law, textual analysis as to kind of where things go. I stayed
14 within the four corners of what I was asked to do.

15 I didn't -- I haven't had -- I'm giving an example,
16 my analysis is done. Okay. I'm just -- now I'm just talking.
17 I did not delve into, you know, whether Select was included in
18 the litigation, none of that. Look at the final judgment,
19 look at the analysis, what does the law say. That's what I've
20 done. Rightly, wrong, what the -- did the joint order
21 allow -- the order allow parties to like to be -- none of
22 that. None of that, none of that was analyzed by me.

23 I stayed within the four corners, I asked people to
24 brief, and I stayed within there and none of that came into
25 the analysis. I sat back and I read documents and I read and

1 I looked at cases. But really the cases just guide contract
2 interpretation to make sure that under Texas law what you're
3 supposed to do really is just the four corners analysis.

4 There's one case that I cited, it's just exception
5 swallowing the rule, but really this is just looking at
6 documents and looking at the jury charge, and looking at what
7 was alleged in the second amended complaint and what the jury
8 made a determination on, and whether that judgment qualifies
9 as an environmental law. And you've got to look at the
10 definitions and what defined terms and what arising under
11 means.

12 People can agree to disagree with it, but you all
13 tell me what you want me to do now.

14 MR. LEU: Thank you, Your Honor. Jordan Leu for
15 Select for the Record.

16 I think this is what we needed for today and that
17 was what was set for today. What I would propose is that
18 Plaintiffs' counsel and we get together and talk about what we
19 need to do as far as a go-forward schedule and go from there.
20 But I think that's all we needed for today, Your Honor.

21 Thank you.

22 THE COURT: Okay. And again, I want to stress, and
23 not to cut Ms. Brown off, I'll give her an opportunity to
24 speak, I just answered questions. It has become very obvious
25 to me in my 4-plus years on the bench that I just answer -- my

1 job is to answer questions of law based on the facts, based on
2 the documents in front of me. I don't resolve disputes.
3 Right? Not really. I answer questions of law that somehow
4 sometimes bring finality to a question, at least at this
5 stage.

6 So I always like when parties talk, but I don't
7 encourage it. I don't force people in a room so I should say.
8 Right? I just think people have questions and ask the judge
9 for an answer, and then, right, my answer shouldn't be, you
10 all go in a room. You asked for -- I asked for briefing to
11 try to answer the questions based on the stuff, and I give it,
12 but I'm saying this probably not for the lawyers but for other
13 people who may be listening.

14 MS. BROWN: Your Honor, we appreciate the time and
15 commitment you put into this as obviously there was a lot of
16 work involved. And I also want to offer our condolences for
17 the loss of your mother.

18 THE COURT: I appreciate it.

19 MS. BROWN: With respect to the issues that were
20 decided today, the one issue that's decided, because we had a
21 hybrid complaint --

22 THE COURT: Uh-huh.

23 MS. BROWN: -- that dealt with the final judgment
24 as well as ongoing issues. So we'll have to confer with the
25 client based on the client's -- the Court's ruling. I would

1 anticipate, depending on how things track, that we would
2 probably have to do an amended complaint at some point as well
3 as tee up the motion for summary judgments, or competing
4 motions for summary judgments as well as the rest of the
5 scheduling order. And we're happy to work with the
6 Defendants.

7 THE COURT: Why don't you all -- and maybe what I
8 would ask Ms. Saldaña to do is maybe check with you all in
9 about two weeks or so. If you reach out to her before then,
10 but if not she'll just send an email to both of you just kind
11 of confirming where we are and just see if we need to schedule
12 something, and if something needs to go to -- just so we don't
13 miss a date and dates start to pop up on my calendar a lot and
14 I just want to make sure that, you know, we don't drag into
15 March or something about that, so it would --

16 MS. BROWN: Yeah, we'll be sure to keep her --

17 THE COURT: -- don't read too much into
18 Ms. Saldaña, other than I'm asking her to reach out in two
19 weeks to see if there's anything I need to do so it doesn't
20 fall off my radar either.

21 MS. BROWN: Okay. Thank you very much.

22 THE COURT: All right, folks? All righty. Again,
23 this is going to be recorded and I'm ordering a copy of the
24 transcript. I don't know how long that stuff takes, I haven't
25 figured all that stuff out, but, you know, it'll be on the

1 docket as soon as possible. Thank you.

2 MR. LEU: Thank you, Your Honor.

3 MS. BROWN: Thank you, Your Honor.

4 THE CLERK: All rise.

5 (Hearing adjourned 10:48 a.m.)

6 * * * * *

7 *I certify that the foregoing is a correct transcript*
8 *to the best of my ability produced from the electronic sound*
9 *recording of the proceedings in the above-entitled matter.*

10 /S./ MARY D. HENRY

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